legislation for this purpose, care would have to be exercised to avoid interfering with judicial functions, or impairing already vested rights. Perhaps a general law drawn to provide a method of enforcing judgments against states, and confining itself to "remedy," would afford the solution.

H. M. B.

PRIVILEGE OF ENEMY ALIENS TO MAINTAIN ACTIONS.—In his History and Practice of Civil Actions, Lord Chief Baron Gilbert (p. 205) states that alienage is a disability which must be pleaded to the action, "because it is forfeited to the King, as a reprisal for the damages committed by the Dominion in enmity with him. In 1 Hale's Pleas of the Crown, (p. 95) it is said "That by the law of England debts and goods found in this realm belonging to alien enemies belong to the King, and may be seized by him," Y. B. 19 E 4, 6, is cited to that effect. The provisions of c. 30 of Magna Charta clearly imply that such confiscation was appropriate under the common law. In case the Crown neglected to seize the debts due the alien enemy the creditor was, upon the termination of the state of war, entitled to sue. *Antoine* v. *Morshead,* 6 Taunt. 237.

The severe rule of the common law was early broken into by the courts. In Y. B., 32 Hen. 6, 23 (b) 5, it is indicated that if an enemy alien came into England under the King's permission he could maintain an action in the King's court for the tortious taking of goods from his house. And since *Wells* v. *Williams,* 1 Ld. Raym. 282, 1 Lutw. 35, 1 Salk. 46, the law has been considered as settled that an enemy alien within the realm by permission could maintain actions, the necessities of trade and commerce having mollified the too rigorous rules of the old law and taught the world more humanity. Even a prisoner of war could maintain an action on a contract for services as a sailor. *Sparenburgh* v. *Bannatyne,* 1 Bos. 1 Pul. 163. At least one judge, however, went on the ground that the plaintiff was no longer an alien enemy. The enemy plaintiff must plead his permissive presence. *Sylvester's Case,* 7 Mod. 150. The rule of pleading seems to have been later settled otherwise. *Casseres* v. *Bell,* 8 T. R. 166, holding that the plea must negative the facts which would enable the plaintiff to maintain the action. *Cf. Boulton* v. *Dobree,* 2 Camp. 163. An enemy alien commorant in the enemy country cannot maintain an action. *Le Bret* v. *Papillon,* 4 East 502.

The course of the English law was reviewed in a very learned opinion by Lord Reading, C. J., in *Porter* v. *Freudenberg,* 1915, 1 K. B. 857, where it was held that actions *against* enemy aliens whether resident or commorant in the enemy country are unaffected. In *Schauffenius* v. *Goldberg,* 1916, 1 K. B., 284, it was held that a German subject interned in England could prosecute an action in court. Judge Younger said: "There has been a gradual and progressive modification in the rules of the old law in their restraint and discouragement of aliens. It is, as I have already indicated, not the nationality, but the residence and business domicil of the plaintiff that are now all important. If these are in enemy country a plaintiff may not sue, whatever his nationality, even if he be a friend. If these

are in friendly or neutral territory, he may sue, even if he be an enemy born. *Prima facie* all persons resident in this country are entitled to have access to the Courts, and, although it may still be that an alien enemy plaintiff resident here must also show that he is here with the license, actual or implied, of the King, still even so, as has been held by Sargant, J., in *Princess Thurn and Taxis* v. *Moffitt,* (1915), 1 Ch. 58, the registration which the plaintiff has effected is sufficient evidence of such a license." Internment was deemed no revocation of the licence.

The view expressed by Judge Younger that if the residence and business domicil of the plaintiff are in a friendly or neutral country the courts are open to him, does not seem to be settled by authoritative rulings. To allow a subject of an enemy country so domiciled to use the processes of the court would seem to open the door to assistance to the enemy, for the only prevention of communication between such plaintiff and his home country would be the more or less uncertain control of the sea and other means of travel. See the opinion of Yeates, J., in *Russel* v. *Skipwith,* 6 Binn. 241. In support of the view expressed by Judge Younger may be cited the dictum of Lord Lindley in *Janson* v. *Driefontein Consolidated Mines Ltd.* (1902) A. C. 484, 505, and the undisposed of case, *In re Mary Duchess of Sutherland,* 31 T. L. R. 248, 394. See, however, *Van Uden* v. *Burrell,* 1916, S. C. 391.

The leading case in the United States is *Clarke* v. *Morey,* 10 Johns 69, in which Chief Justice KENT stated the law essentially as indicated above. The disability of alienage it is there laid down, is confined to two cases: "(1) Where the right sued for was acquired in actual hostility; * * * * (2) where the plaintiff, being an alien enemy, was resident in the enemy's country." Recent New York cases announcing the same rule are *Rothbarth, et. al.* v. *Herzfield,* 179 App. Div. 865; *Arndt-Ober* v. *Metropolitan Opera Co.,* (Apr. 5, 1918) 169 N. Y. Supp. 944.

Where there were several alien enemy plaintiffs some non-resident and some resident it was held that the suit, which was indivisible in nature, should be stayed during the continuance of the war. *Speidel* v. *Barstow Co.,* 243 Fed. 621. But in another case where there were two alien enemy plaintiffs one resident and the other non-resident the suit being for restrictive relief only, it was held that no stay would be granted, the court largely relying upon the now generally discredited statement of the President that the war was with the German government not the German people. *Posselt* v. *D'Espard,* 87 N. J. Eq. 571. If the defendant had been able to show that the non-resident plaintiff was the Kaiser or a member of his General Staff perhaps the conclusion might have been otherwise. As to the situation where the plaintiff is a corporation organized in this country but really owned and controlled by non-resident alien enemies, see *Fritz Schulz Jr. Co.* v. *Raimes & Co.,* 166 N. Y. S. 567, 16 MICH. L. REV. 45. *Cf. Daimler Co.* v. *Continental Tyre and Rubber Co.* (1916) 2 A. C. 307.

It is perhaps unnecessary to state that the class of aliens that may be permitted to resort to the courts may be enlarged or cut down by the legislative body. R. W. A.